

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

JOE R. WHATLEY, JR., solely in his capacity
as the WD Trustee of the WD Trust,

Appellant,

v.

CANADIAN PACIFIC RAILWAY LIMITED,
CANADIAN PACIFIC RAILWAY
COMPANY,
SOO LINE CORPORATION, AND
SOO LINE RAILROAD COMPANY,

Appellees.

Case No. 17-1677

District Court No. 1:16-cv-74-BRW

**APPELLANT’S (I) STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL (II)
DESIGNATION OF ITEMS TO BE INCLUDED IN RECORD ON APPEAL AND (III)
METHOD OF APPENDIX PREPARATION NOTIFICATION**

Pursuant to Rule 30(b) of the Federal Rules of Appellate Procedure, the appellant, Joe R. Whatley, Jr., solely in his capacity as the WD Trustee of the WD Trust (the “Trustee”), hereby designates the items to be included in the record on appeal and presents his statement of the issues to be presented on appeal as follows:

I. Appellant’s Statement of Issues to be Presented on Appeal

1. Whether the District Court erred in finding or concluding that the Trustee had not sufficiently pleaded or alleged plausible causes of action under 49 U.S.C. § 11706, including the Trustee’s allegations that the claims were timely for the reasons alleged in the Trustee’s complaint.
2. Whether the District Court erred in failing to apply the relevant standards for adjudicating a motion for judgment on the pleadings and/or a motion for summary judgment in dismissing the Trustee’s complaint with prejudice.
3. Whether the District Court erred in finding or concluding that *res judicata* and/or collateral estoppel did not prevent the Appellees from raising their arguments in *All Defendants’ Threshold Motion for Judgment on the Pleadings or, in the Alternative, for Summary Judgment*.

4. Whether the District Court erred in ruling on the effects of the plan and confirmation order in the Maine chapter 11 case when the United States District Court for the District of Maine had exclusive jurisdiction over such matters.
5. Whether the District Court erred in finding or concluding that no genuine issue of material fact existed as to when the relevant contractual limitations period had begun with respect to the assigned claims of the World Fuel entities, and in supporting that finding or conclusion, by concluding that a notice of claim expressly preserving claims under 49 U.S.C. § 11706 and stating that it was not a notice of claim under 49 U.S.C. § 11706 was nonetheless (and contrary to the stated intent of the noticing party) a notice of a claim under 49 U.S.C. § 11706 the response to which triggered the contractual limitations period.
6. Whether the District Court erred in finding or concluding that no genuine issue of material fact existed as to the date of commencement of the relevant contractual limitations period, and in finding that the disallowance of a notice of claim expressly acknowledging that the notice of claim was not a claim made under 49 U.S.C. § 11706 nonetheless (and contrary to the stated intent of the parties) constituted the disallowance of a claim under 49 U.S.C. § 11706 and therefore triggered the running of the relevant contractual limitations period.
7. Whether the District Court erred in determining that 49 U.S.C. § 11706(e) is a statute of limitations and not a restriction on ability of a carrier to contractually limit the period in which a claim must be presented and suit must be filed.
8. Whether the District Court erred in finding or concluding that the limitations period under 49 U.S.C. § 11706 was not sufficiently tolled pursuant to the express provisions of the confirmed plan in the Maine chapter 11 case, and that the Trustee's Complaint was accordingly untimely.
9. Whether the District Court erred in finding or concluding that a consignee that is not a party to the relevant bill of lading is subject to a limitations period for bringing a suit under 49 U.S.C. § 11706 which is contained only in such bill of lading.
10. Whether, given the applicable law that provides that a party with a Carmack claim need not provide any notice until it is able to calculate its damages with precision, the District Court erred in finding no genuine issue of material fact as to the timeliness of notice by the Irving Oil entities when the record compelled a finding that the Irving Oil entities could not calculate their damages under the Carmack Amendment until the United States District Court for the District of Maine confirmed the chapter 11 plan and, through such confirmation, approved and rendered effective the relevant settlement agreement between the Irving Oil entities, the chapter 11 trustee and the Canadian debtor (and its court-appointed monitor).

II. Appellant's Designation of Items to be Included in the Record on Appeal

The Trustee hereby designates the following items, including all documents at the docket entries referred to below, for inclusion in the record of its appeal:

Date	Docket No.	Title
04/12/16	1	Complaint (including all attached exhibits)
05/26/16	24	Canadian Pacific Railway Company's Answer to the Complaint and Jury Trial Demand
05/26/16	25	Soo Line Railroad Company's Answer to the Complaint and Jury Trial Demand
5/26/16	26	Soo Line Corporation's Answer to the Complaint and Jury Trial Demand
05/26/16	27	Canadian Pacific Railway Limited's Answer to the Complaint and Jury Trial Demand
08/01/16	40	Canadian Pacific Railway Limited and Soo Line Corporation's Motion for Judgment on the Pleadings
08/01/16	41	Canadian Pacific Railway Limited and Soo Line Corporation's Memorandum of Law in Support of Motion for Judgment on the Pleadings
09/08/16	45	Plaintiff's Objection to Canadian Pacific Railway Limited's and Soo Line Corporation's Motion for Judgment on the Pleadings
09/22/16	46	Canadian Pacific Railway Limited and Soo Line Corporation's Reply to Plaintiff's Objection to Motion for Judgment on the Pleadings
09/22/16	48	Notice of Supplemental Authority
09/30/16	50	Plaintiff's Response to Notice of Supplemental Authority by Canadian Pacific Railway Limited and Soo Line Corporation and Notice of Additional Supplemental Authority (including all attached exhibits)
10/03/16	51	CP Limited and Soo Line Corp.'s Reply to Whatley's Response to Notice of Supplemental Authority
11/15/16	54	All Defendants' Threshold Motion for Judgment on the Pleadings or, in the Alternative, for Summary Judgment
11/15/16	55	Brief in Support of All Defendants' Threshold Motion for Judgment

		on the Pleadings or, in the Alternative, for Summary Judgment
11/15/16	59	Declaration of Paul J. Hemming
11/28/16	62	Order Setting Briefing Schedule
12/08/16	63	All Defendants' Motion to Stay Discovery
12/08/16	64	All Defendants' Memorandum of Law in Support of Motion to Stay Discovery
12/08/16	65	Declaration of Timothy R. Thornton
12/08/16	66	Declaration of Paul J. Hemming (including all attached exhibits)
12/12/16	68	Amended Order Setting Briefing Schedule
12/20/16	69	Plaintiff-Trustee's Objection to Defendants' Threshold Motion for Judgment on the Pleadings or, in the Alternative, for Summary Judgment
12/20/16	70	Declaration of Jeffrey Weissman in Support of Plaintiff-Trustee's Objection to Defendants' Threshold Motion for Judgment on the Pleadings or, in the Alternative, for Summary Judgment
12/20/16	71	Affidavit of Robert J. Keach in Support of Plaintiff-Trustee's Objection to Defendants' Threshold Motion for Judgment on the Pleadings or, in the Alternative, for Summary Judgment (including all attached exhibits)
12/21/16	72	Plaintiff-Trustee's Request for Oral Argument
12/28/16	76	Declaration of Jeffrey Weissman in Support of Plaintiff-Trustee's Objection to Defendants' Threshold Motion for Judgment on the Pleadings or, in the Alternative, for Summary Judgment
12/28/16	78	Defendants' Supplement (including all attached exhibits)
12/28/16	82	Plaintiff's Objection to Defendants' Motion to Stay Discovery
01/06/17	83	Defendants' Reply to Plaintiff's Opposition to Threshold Motion for Judgment on the Pleadings or, in the Alternative, for Summary Judgment
01/06/17	84	Declaration of André Durocher (including all attached exhibits)

01/06/17	85	Defendants' Reply to Plaintiff's Opposition to a Stay of Discovery
02/10/17	---	Transcript of February 10, 2017 Status Conference before Senior Judge Billy Roy Wilson ¹
03/24/17	92	Order
03/24/17	93	Judgment
03/28/17	94	Appellant's Notice of Appeal

III. Method of Appendix Preparation Notification

Appellant and Appellees will submit separate appendices.

Dated: April 13, 2017

**JOE R. WHATLEY, JR., SOLELY IN
HIS CAPACITY AS THE
WD TRUSTEE OF THE WD TRUST**

By his attorneys:



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¹ A true and correct copy of the court ordered transcript is attached hereto as **Exhibit A.**

CERTIFICATE OF SERVICE

I hereby certify that on April 13, 2017, I electronically filed the foregoing with the Clerk of Court for the United States Court of Appeals for the Eighth Circuit by using the CM/ECF system. Participants in the case who are registered users will be served by the CM/ECF system.


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EXHIBIT**A**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTAJoe. R. Whatley, Jr., Soley In His Capacity)
As The WD Trustee Of The WD Trust)

v.)

CASE NO. 1:16-cv-00074

Canadian Pacific Railway Limited, Canadian)
Pacific Railway Company, Soo Line)
Corporation, and Soo Line Railroad Company)

TRANSCRIPT REQUEST - APPEAL

A Notice of Appeal to the Eighth Circuit Court of Appeals was filed on March 28, 2017
in the United States District Court for the District of North Dakota.

Pursuant to Rule 10(b), Federal Rules of Appellate Procedure, the appellant hereby orders the following portion(s) of the transcript: (Add pages if necessary.) **Please state if the criminal trial transcript should include prosecution opening statement, defense opening statement, prosecution argument, defense argument, prosecution rebuttal, voir dire or jury instructions. CJA attorneys must get authorization from the Court.**

Transcript of Teleconference held on February 10, 2017

Costs of the transcript will be paid by the following method:

Upon receipt of the transcript and invoice, invoice will be promptly paid by credit card.

Arrangements for payment have been made with the Court Reporter: ☒ Yes ☐ No

☐ Please check if the transcript is not necessary and will not be ordered.

Attorney's Name: Robert J. Keach, Esq.
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City, State, Zip: Portland, ME 04104
Telephone: (207) 228-7334

COURT REPORTER'S ACKNOWLEDGMENT

Pursuant to Rule 11(b) FRAP, receipt of the foregoing Transcript Request is hereby acknowledged this date and arrangements have/have not been made for payment. Transcript will be filed on or before _____.

Dated: _____

Court Reporter